



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUL 30 2018

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

NOW THE
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EMERGENCY MANAGEMENT

The Honorable Benjamin L. Cardin
United States Senate
Washington, D.C. 20510

Dear Senator Cardin:

Thank you for your two letters of April 27, 2018, to the U.S. Environmental Protection Agency, expressing your concerns on the proposed rule titled, *Disposal of Coal Combustion Residuals (CCR) from Electric Utilities; Amendments to the National Minimum Criteria (Phase One)*. The letters have been added to the public docket associated with this proposal.

The EPA is committed to addressing the risks associated with coal ash disposal. Enacted in 2016, the Water Infrastructure for Improvements to the Nation (WIIN) Act provides for state permitting programs, or for the EPA to be the permitting authority in applicable cases. The WIIN Act contemplates that state programs may adopt alternative technical requirements provided the EPA has determined they are at least as protective as the federal regulations, see 42 U.S.C. § 6945(d)(1)(B)(ii), (C).

On July 18, 2018, the EPA finalized the first set of revisions to the 2015 regulations for the disposal of CCR from electric utilities and independent power producers to facilitate the Agency's implementation of the WIIN Act and regulation of CCR disposal through state and federal permit programs. These revisions provide utilities and states more flexibility in how CCR is managed, while continuing to meet the statutory safety standards on which the CRR is based.

These final revisions and the other proposed amendments to the CCR disposal regulations include provisions that are similar to those currently available in the long-standing municipal solid waste regulations presently implemented by states. The proposal also contains other amendments subject to EPA approval and oversight, including amendments to certain provisions of the 2015 final coal ash rule that were remanded back to the agency in 2016 as part of the settlement of certain claims brought challenging the final rule, see *USWAG et al. v EPA*, No. 15-1219 (DC Cir. 2015). Many of the regulatory changes will help implement the WIIN Act and the transition to permit programs.

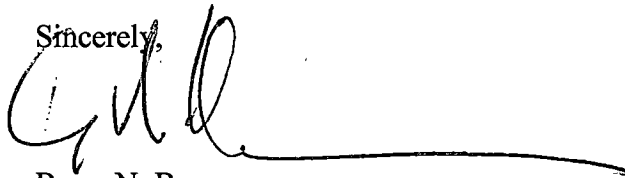
The WIIN Act Section 2301 also added a process for the EPA to review approved state programs for control of coal combustion residuals. That section of the Act, due to your work, contains new law requiring the Administrator to review a state permit program on the request of specifically *any* (emphasis added) other State which asserts that soil, groundwater, or surface water of the requesting State is or is likely to be adversely affected not only by the release from a coal combustion residual unit

but also by a potential release. The new revisions do not seek to undermine this important provision. Once state permitting programs are approved, the EPA will take very seriously its responsibility to review these programs no less frequently than every twelve years, and review these programs upon the request of any state that meets these conditions, not simply adjacent states.

Regarding the length of the comment period, the EPA reviewed over 160,000 comments. In addition, at the public hearing on April 24, 2018, the EPA heard comments from over 70 speakers and considered this important input in developing the final rule.

Again, thank you for your letters. If you have further questions, please contact me or your staff may contact Carolyn Levine in the EPA's Office of Congressional and Intergovernmental Relations at levine.carolyn@epa.gov or at (202) 564-1859.

Sincerely,

A handwritten signature in black ink, appearing to read 'Breen', followed by a long horizontal line extending to the right.

Barry N. Breen
Acting Assistant Administrator